# APPENDIX

## Verified Motion to Reconsider and for Stay

[Filed Oct. 3, 1972]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

HAMMOND DIVISION

[CAPTION OMITTED]

Come now the Defendants, Edgar D. Whitcomb, Governor of the State; Karl J. Stipher and Thurman DeMoss, by Theodore L. Sendak, Attorney General of Indiana, by his deputies, Edward W. Johnson and Thomas R. Neal, and move the Court to reconsider its ruling in the above cause entered on September 28, 1972, and in the alternative move the Court to clarify its said ruling and allege and say:

1. That on the 28th day of September, 1972, this Court, as a three-judge court, entered an order providing that defendants, upon the filing of an affidavit by plaintiff, Communist Party of Indiana, should certify such party and cause their inclusion upon the ballot for the November general election, as shown in Order of this Court as attached hereto as Exhibit "A".

2. Counsel have been informed and believe that such an affidavit has been filed upon this 29th day of September, 1972.

3. That administrative action by defendants must be taken on this 29th day of September, 1972, in order that absentee ballots may be printed before the time required by Indiana law; that the evidence produced at the trial of this cause established that the deadline for the printing of such ballots was September 29, 1972.

4. That the defendants had refused to accept the petitions of plaintiff, Communist Party of Indiana, and consider the validity of them because of the failure to provide the loyalty oath at the time of presentation. That Indiana law requires that such application including [sic] a petition signed by registered voters in a number equal to one-half of one percent of the total voters for the office of Secretary of State in the last preceding general election. That such petitions have never been considered by the defendants to determine the validity of the signatures thereon. That defendants and their counsel have reason to believe that the petitions do not include the required number of valid signatures.

5. Evidence was attempted to be presented to this Court as to the number of valid signatures, which would have shown that there were not sufficient valid signatures. That the Court adjourned its hearing during such testimony before such time that the defendants had rested their case and entered the order which failed to take any notice of this issue. That defendants under Indiana law have a legal duty to perform the function of requiring [sic] into the validity of the signatures on the petition, in the order of this Court mentioned above and the effect of the order of this Court [sic] mentioned above is to preclude defendants from exercising that legal duty.

6. Therefore the order referred to above should be modified by the Court to provide the defendants with the necessary means to inquire into the validity of the signatures referred to in the petitions, or in the alternative the order should be clarified by the Court, reaching the issue of the validity of the signatures, and directing the defendants to inquire into the validity of the signatures as they are required to do under Indiana law, and that the Court stay the effective date of its said order until further order of the Court.

7. That because of the time limitations as hereinbefore set out an emergency exists which requires an immediate ruling by a Judge of this Court without the reconvening of the three-judge panel.

8. In the event the Court cannot act on this motion, conflict, [sic] and without the necessity of reconvening the three-judge panel, an emergency exists for the entry of a stay order staying the effective date for the operation of the order of this Court on September 28, 1972.

WHEREFORE, the defendants respectfully pray that this Court modify its order or in the alternative clarify its order to enable said defendants to inquire into the validity of the signatures of said petitions as they are required to do under Indiana law, and that the Court stay the effective date

of its said order until further order of the Court, and for all other necessary relief in the premises.

THEODORE L. SENDAK
*Attorney General of Indiana*

EDWARD W. JOHNSON
*Assistant Attorney General*

THOMAS R. NEAL
*Deputy Attorney General*

Office of Attorney General
219 State House
Indianapolis, Indiana 46204
633-6240

[Verification Omitted]